The Examiner has finally rejected claims 1-47 under the judicially created doctrine of obviousness-type double patenting as allegedly being unpatentable over claims 1-60 of Sumner *et al.*, U.S. Patent No. 6,159,347 (hereinafter, US-'347), and claims 1-67 of Sumner *et al.*, U.S. Patent No. 6,224,717 (hereinafter, US-'717).

The Examiner has also finally rejected claims 1-47 under 35 U.S.C. § 103(a) as allegedly being obvious over claims 1-60 of US-'347 and claims 1-67 of US-'717.

Lastly, the Examiner has finally rejected claim 1-47 under 35 U.S.C. § 102(f), asserting that the inventor allegedly did not himself invent the claimed subject matter.

Rejection under Obviousness Double Patenting

In response to the Examiner's rejection of the claims under obviousness double patenting, Applicants respectfully submit that the rejection is improper in this situation, because the present application (*i.e.*, CPA filed Oct. 9, 2001) and US-'347 and US-'717, are not commonly owned. The present application is owned by Archer Daniels Midland Company, and US-'347 and US-'717 are owned by a different entity. Absent common ownership between the present application and the cited patents, a rejection under obviousness double patenting is misapplied. The MPEP states that:

> **Commonly owned applications of different inventive entities may be rejected on the ground of double patenting**. . . . The practice of rejecting claims on the ground of double patenting **in commonly owned applications** of different inventive entities . . . prevents **an organization** from obtaining two or more patents with different expiration dates covering nearly identical subject matter.

MPEP 706.02(l)(3) (Emphasis added).

Since common ownership between the present application and the cited patents does not exist, the basis for this rejection (*i.e.*, to prevent an organization from obtaining two or more patents with different expiration dates covering nearly identical subject matter), also does not exist. The claimed subject matter of the present application and the cited patents is not assigned to a single organization (*i.e.*, an organization), but rather to two separate and distinct organizations. Thus, the common ownership requirement for the applied obviousness type double patenting rejection is missing. Applicants respectfully request that this rejection be withdrawn.

Rejections under 35 USC §§ 103(a) and 102(f)

Applicants respectfully traverse the rejections under 35 USC §§ 103(a) and 102(f) in view of the recently filed CPA (filed on September 19, 2001) and recent amendment to 35 U.S.C. §103, which created subsection (c), which reads as follows:

> Subject matter developed by another person, which qualifies as prior art only under one or more of subsections (e), (f) or (g) of section 102 of this title, **shall not be precluded patentability** under this section **where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person**.

(Emphasis added, see MPEP 706.02(l)(1).) New subsection 103(c) applies to all continuing applications filed after November 29, 1999, which includes the CPA filed on September 19, 2001, to which the outstanding final rejection applies.

Evidence of Common Ownership

In accord with M.P.E.P. 706.02(l)(2), evidence supporting the common ownership of the present claimed invention and the subject matter of US-'347 and US-'717, at the time the invention was made, is provided by the following statement:

In view of the assignee information on the face of US-'347 and US-'717, and the assignment information in the present application, it is the undersigned's understanding that **the subject matter of US-'347 and US-'717 and the claimed invention of this application (*i.e.*, 09/360,947), were at the time the invention was made, subject to an obligation of assignment to Eastman Chemical Company.**

Thus, in accord with M.P.E.P. § 706.02(l)(3), applicant respectfully requests that the rejections under 35 U.S.C. §§ 103(a) and 102(f) be withdrawn in view of 35 U.S.C. § 103(c).

In view of the above arguments, Applicants believe that all claims of the present application are in condition for allowance. Favorable notification to that effect is respectfully requested.

Conclusion

All of the stated grounds of objection and rejection have been properly traversed, accommodated, or rendered moot. Applicant therefore respectfully requests that the Examiner reconsider all currently outstanding objections and rejections and that they be withdrawn. Applicant believes that a full and complete reply has been made to the outstanding Office Action and, as such, the present application is in condition for allowance. If the Examiner believes, for any reason, that personal communication will

expedite prosecution of this application, the Examiner is invited to telephone the undersigned at the number provided.

Prompt and favorable consideration of this Reply is respectfully requested.

Respectfully submitted,

STERNE, KESSLER, GOLDSTEIN & FOX P.L.L.C.

Steven R. Ludwig
Attorney for Applicant
Registration No. 36,203

Date: 3/6/02

1100 New York Avenue, N.W.
Suite 600
Washington, D.C. 20005-3934
(202) 371-2600

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